



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

JUN 6 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eugene A. Wimpee
6425 Cottage Hill Road
Mobile, Alabama 36695

Re: Wimpee Consistency Appeal

Dear Mr. Wimpee:

You filed a notice of appeal with the Secretary of Commerce pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Alabama Department of Environmental Management (DEM) for an after-the-fact permit for the fill of adjacent wetlands on Weeks Bay, Baldwin County, Alabama.

By your February 18, 2004, correspondence, you have requested a fee waiver in this appeal because you are unable to pay the costs of administering and processing this consistency appeal. I have been delegated the authority to waive fee payments associated with consistency appeals. I hereby grant a fee waiver in this appeal.

Forthcoming will be letters from the Office of the Assistant General Counsel for Ocean Services, establishing an initial briefing schedule and explaining the issues to be addressed in the briefs.

Because you are proceeding without an attorney in this matter, let me take the opportunity to explain the briefing process in greater depth. As Appellant, you will be responsible for filing the first brief. In your brief, you will need to explain why the Secretary should find that the activity you are seeking a permit for is either (1) consistent with the objectives or purposes of the CZMA or (2) necessary in the interest of national security. This standard is set forth in 16 U.S.C. § 1456(c)(3)(A). With respect to whether your activity is consistent with the CZMA, you will need to meet the three-part test set forth in our regulations at 15 C.F.R. § 930.121 (2003). A copy of the relevant statutory and regulatory language is set forth in an attachment to this letter as a guide.



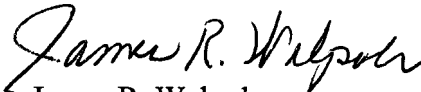
Your brief should also cite to past decisions of the Secretary and refer to and include copies of documents and other evidence that you believe support the points you make. Copies of past decisions of the Secretary may be found at: <http://www.ogc.doc.gov/czma.htm>. You may also find useful briefs written by parties in other CZMA appeals; these briefs can be found at the same website by clicking on "Administrative Records" in the Library menu.

You may also be given an opportunity to file a reply brief. Your reply brief should address only the issues raised by the State, and should not raise new issues. You should also follow the same approach in terms of citations to past decisions of the Secretary and citations to and inclusion of documents and other evidence in support of the points you make.

Finally, after reviewing the State's CZMA objection letter and the Corps' notification that your after-the-fact permit request was denied pending the outcome of your appeal to the Secretary, we believe that you may also want to discuss settlement opportunities with Alabama DEM that would result in the removal of the State's objection. NOAA's Office of Ocean and Coastal Resource Management (OCRM) will contact the State's CZMA program to determine if there is potential for settlement of this matter that meets both your needs and the policy objectives of the State's CZMA program. We will notify you of the outcome of this contact.

If you have any questions, please contact Molly Holt at (301) 713-2967, extension 215.

Sincerely,


James R. Walpole
General Counsel

Attachment

cc: The Honorable Bob Riley
Governor of the State of Alabama
The Honorable Troy King
Attorney General of the State of Alabama
Mr. James W. Warr
Director, Alabama Department of Environmental Management
Colonel Robert B. Keyser
District Engineer, Mobile, U.S. Army Corps of Engineers
Steven O. Jenkins
Chief, Field Operations Division, Alabama Department of Environmental Management
Chuck Sumner
U.S. Army Corps of Engineers

Attachment

1. Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A) (emphasis added):

No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that **the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.**

2. Commerce Department Regulations – “Consistent with the objectives or purposes” of CZMA

A federal license or permit activity, or a federal assistance activity, is "consistent with the objectives or purposes of the Act" if it satisfies each of the following three requirements:

- (a) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner.
- (b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.
- (c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to considering, previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal.

15 C.F.R. 930.121 (2003).